IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 16763 of 2004(U)

PETITIONERS:
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1. **STATE OF KERALA, REP. BY ITS SECRETARY TO GOVERNMENT, HOME DEPARTMENT, TRIVANDRUM.**

2. **CIRCLE INSPECTOR OF POLICE, HILL PALACE POLICE STATION, ERNAKULAM.**

BY SR.GOVERNMENT PLEADER SRI. P.N.SANTHOSH

RESPONDENTS:
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1. **ERNAKULAM DISTRICT LEGAL SERVICE AUTHORITY, KOCHI-11.**

2. **S. SHAJAHAN, S/O. SAFARULLAKHAN, VADAKKENALUTHUNDATHIL HOUSE, THONNALLOOR, PANTHALAM P.O., PATHANAMTHITTA.**

3. **M/S. STANDARAD CHARTERED BANK, REP. BY ITS BRANCH MANAGER, RAVIPURAM, M.G. ROAD, ERNAKULAM.**

BY ADV. SRI.S.SANAL KUMAR for R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON 23/10/2007 DELIVERED THE FOLLOWING:

KSS

WPC.NO.16763/2004 U

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P1: COPY OF THE AWARD DTD. 12/05/03 OF THE LOK ADALATH IN EDLA 44/03.

/TRUE COPY/

P.A.TO JUDGE

KSS

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.16763 OF 2004

Dated this the 23rd day of October, 2007

JUDGMENT

"C.R."

This writ petition filed by the State of Kerala and a Circle Inspector of Police raises an issue regarding the scope of proceedings in Lok Adalaths in terms of the provisions contained in the Legal Services Authorities Act, 1987, hereinafter referred to as the 'Act'. Having regard to the issue involved, reference is being made hereunder only to the bare essential facts.

2. One Ayyappan gave a First Information Statement, on the basis of which, Cr.No.8/03 of the Hill Palace Police Station was registered against 14 persons for offences punishable under Section 397 IPC. Investigation is going on. The basis of the complaint of Ayyappan appears to be a loan transaction between the third respondent, a Bank, and the second respondent. The hypotheca under that transaction, a car, was allegedly re-possessed by the Bank and put in safe custody in a godown at

Irumpanam. Ayyappan's F.I. statement was regarding the alleged trespass by 14 persons during the night of 8.1.2003 and assault of three watchmen, followed by theft of the car, after forcibly taking the key from the godown. The second respondent is alleged to be the master mind behalf that incident. This is how the case is registered for robbery, dacoity and attempt to cause death, punishable under Section 397 IPC.

3. In the mean while, the second respondent, the debtor filed a suit before the Munsiff's Court, Ernakulam against the creditor Bank and that led to an award being made in the Lok Adalath on 12.5.2003. The disputes between the debtor and the creditor appear to have been settled by that award. However, the last paragraph of that award reads as follows:

> "In view of this settlement/compromise arrived at between the parties, it is hereby decided to request the Investigating Officer of Crime No.8/03 of the Hill Palace Police Station to file a refer report before the Addl. Chief Judicial Magistrate Court, Ernakulam, as the complaint therein was made because of a mis-understanding/mistake of fact. The respondent bank and the yard watchmen, viz. Ayyappan, Viswanathan

> and one another will not proceed with the Crime No.8/03 of the Hill Palace Police station, as due compensation as detailed above will be paid by the plaintiff/petitioner to them through the respondent bank."

4. The award is signed by the Judicial First Class Magistrate as the Presiding Officer of the Adalath, and an advocate as its member.

5. This writ petition is filed seeking to set aside the direction contained in the award, as quoted above.

6. An offence punishable under Section 397 IPC is not compoundable under Section 320 of the Code of Criminal Procedure, 1973. In terms of the proviso to Section 19 (5) of the Act, the Lok Adalath shall have no jurisdiction in respect of any case or matter regarding an offence not compoundable under any law. This means that while the Lok Adalath would have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of a case pending before; or any matter which

is falling within the jurisdiction of, and is not before, any court for which the Lok Adalath is organised; it shall not have jurisdiction to determine or to arrive at a compromise or settlement regarding any case or matter relating to an offence not compoundable under law. Therefore, it is not permissible for the Lok Adalath to enter into any determination or to arrive at a compromise or settlement in relation to a case or matter regarding an offence punishable under Section 397 IPC, which is a non-compoundable one. Hence, any determination, compromise or settlement in the impugned award of the Lok Adalath, to the extent it deals with Cr.No.8/03 of the Hill Palace Police Station, is without the authority of law.

7. Faced with the aforesaid position in law, the learned counsel for the second respondent debtor attempted to point out that the last paragraph of the award, quoted above, does not contain any direction to the investigating officer. It was argued that the decision at the Adalath was only to request the investigating officer to file a refer report before the court, to

which, a final report in that case ought to be given and that the creditor bank and the watchmen, viz. Ayyappan, Viswanathan and another, would not proceed with that crime case, as due compensation would be paid by the debtor to them through the bank.

8. Learned counsel for the second respondent appears to be correct in saying that the last paragraph of the award does not contain any word 'direct' or any other expression by the Judicial Magistrate of the First Class, who was the Presiding Officer of the Adalath, requiring the investigating officer to file a refer report.

9. When an award is issued by the Adalath with the Judicial Magistrate of the First Class or any judicial officer as the Presiding Officer, and when it contains a decision to request an Investigating Officer to do a particular thing in a particular manner, in this case, to file a refer report on the basis that the complaint was made on a mis-understanding or mistake of fact,

that request has to be read only as a command to the investigating officer. That is the pedestal on which the judiciary and its officers are placed, qua the police, including the investigating officer. The correctness or otherwise of that command would be a different matter. But the fact remains that it is a command. I would not read it merely as a request. It is essentially a command.

10. That apart, the question whether a complaint has been made on a mis-understanding or mistake of fact or whether the consequential registration of the crime case was on a mis-understanding or mistake of fact are not matters, on which, the investigating officer ought to be instructed by anybody else. That is something that would emerge, if at all, in the course of investigation, even on being told by the defacto complainant, which statement would again be a matter to be scrutinised by the investigating officer. Otherwise, the transparency of such process would be lost; the credibility of the institution would be lost; reckless complaints could be made, or; validity and truthful

complaints disclosing the commission of cognizable offences, including non-compoundable ones, could be settled without the due process of law and taken away from the purview of the investigating, prosecuting, adjudicating and sentencing machineries. This is clearly impermissible.

For the aforesaid reasons, the last paragraph in Ext.P1 award is quashed leaving the second respondent investigating officer with liberty to proceed with the investigation in Cr.No.8/03 of the Hill Palace Police Station, including by considering all relevant facts, factors and matters, even as to whether the complaint was made on a mis-understanding/ mistake of fact and whether it needs to be referred as not disclosing the commission of a cognizable offence. The writ petition is allowed as above.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.